

REMARKS

Applicants submit this Amendment in response to the Office Action dated February 6, 2008. In this Amendment, Applicants amend claims 123, 134, 142, 151-153, 159, and 171 to better define the claimed subject matter. Applicants respectfully submit that no new matter has been submitted. After entry of this Amendment, claims 123-192 remain pending.

In the Office Action:

(a) The Examiner provisionally rejected claims 123, 142, and 159 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 123, 141, and 159 of copending U.S. Patent Application No. 11/752,167;

(b) The Examiner rejected claims 123-135, 141-152, 159-172, and 178-192 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,443,467 to Biedermann et al. ("Biedermann") in view of U.S. Patent Publication No. 2004/0039384 to Boehm, Jr. et al. ("Boehm"); and

(c) The Examiner rejected claims 136-140, 154-158, and 173-177 under 35 U.S.C. § 103(a) as being unpatentable over Biedermann and Boehm as applied to claims 123, 142, and 159, and further in view of U.S. Patent No. 6,090,113 to Le Couedic et al. ("Le Couedic").

Examiner Interview

As a preliminary matter, Applicants thank the Examiner for the courtesy of the telephonic interview on February 26, 2008, with the Applicants' undersigned representative. The content of this Amendment is consistent with that which was discussed during the interview.

Claim 153

In the Office Action Summary, claim 153 was indicated as being rejected. In the Detailed Action, however, no reason was provided for rejecting claim 153.

If the Examiner issues another Office Action rejecting or objecting to any part of this Application, the Applicants respectfully request that this other Office Action be made non-final, so that Applicants may consider the rejection to claim 153.

Provisional Double Patenting Rejection

Along with this Amendment, Applicants submit a Terminal Disclaimer to disclaim the terminal part of the statutory term of any patent granted on U.S. Patent Application No. 11/752,167, filed on May 22, 2007, as such term is defined in 35 U.S.C. §§ 154 and 173.

Accordingly, Applications respectfully request the Examiner to withdraw his provisional rejection under (a), above.

35 U.S.C. § 103(a) Rejections

Applicants amend independent claims 123, 142, and 159 to recite, “wherein after the rod, the first closure member, and the first bone screw [or first bone fastener] are implanted, the distal end of the first sleeve is decoupled from the first bone screw [or first collar or first bone fastener].”

Applicants respectfully submit that the prior art, including Biedermann, Boehm, and Le Couedic, does not disclose—*inter alia*—this claim recitation. Furthermore, Applicants respectfully submit that it is not obvious to modify the teachings of Biedermann, Boehm, and Le Couedic to perform this recitation, because to do so would change the principal of operation of Biedermann. *See* M.P.E.P 2143.01 VI. Furthermore, modifying Biedermann as proposed by the Examiner would render Biedermann unsatisfactory for its intended purpose. *See* M.P.E.P. 2143.01 V.

In the Office Action, the Examiner proposes that the recited sleeve is disclosed in Biedermann as reference numeral 14. Office action, pages 3 and 4. Biedermann refers to 14 as a lock nut. *See* Biedermann, col. 3, lines 15-22. Biedermann further discloses that, “[T]he round rod [16] is finally inserted into the U-shaped recess 6 and positionally locked by inserting and tightening the rod locking nut 13. *Thereafter*, the lock nut 14 is screwed onto the free ends of the U-shaped recess 6 in the manner shown in Fig. 2. The rod locking nut 13 as well as the *lock nut 14 are turned until they exert a desired fixing force on the round rod 16.*” *Id.* *Author’s Emphases added.*

Lock nut 14 of Biedermann is used to exert a desired fixing force onto round rod 16 after rod 16 is inserted into recess 6. *Id.* Nothing in Biedermann discloses lock nut 14 from “being decoupled from” any bone screw or bone fastener *after* the rod is implanted,

as recited in the amended claims. Furthermore, modifying Biedermann such that lock nut 14 is decoupled from a bone screw after rod 16 is implanted would change the principal of operation of Biedermann and would render lock nut 14 unsatisfactory for its intended purpose, since the purpose of lock nut 14 is to apply a fixing force onto rod 16 after rod 16 is inserted in recess 6. *See* Biedermann, col. 3, lines 15-22, and M.P.E.P. 2143.01 V and VI.


For these reasons, Applications respectfully request the Examiner to withdraw his rejections under (b) and (c), above.

Applicants also respectfully submit that the application is in condition for allowance.

The Examiner is invited to contact the undersigned at the phone number indicated below with any questions or comments, or to otherwise facilitate expeditious prosecution of the application.

Respectfully submitted,
Landry, et al.

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